

EXHIBIT

11

DEFENDANTS' MOTION TO EXCLUDE THE TESTIMONY OF DR. CHRISTOPHER TEAF

05-CV-0329 GKF-PJC

PR#9833

CRUTCHER, JAMES

12/20/2007

1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OKLAHOMA
3

4 STATE OF OKLAHOMA, ex rel.
5 W. A. DREW EDMONDSON,
6 in his capacity as
7 ATTORNEY GENERAL OF THE
8 STATE OF OKLAHOMA and
9 OKLAHOMA SECRETARY OF THE
10 ENVIRONMENT C. MILES TOLBERT,
11 in his capacity as the TRUSTEE
12 FOR NATURAL RESOURCES FOR THE
13 STATE OF OKLAHOMA,
14

15 Plaintiffs,

16 Vs. No. 05-CV-0329 GKF-SAJ

17 TYSON FOODS, INC., TYSON
18 POULTRY, INC., TYSON
19 CHICKEN, INC., COBB-VANTRESS,
20 INC., AVIAGEN, INC., CAL-MAINE
21 FOODS, INC., CAL-MAINE FARMS,
22 INC., CARGILL, INC., CARGILL
23 TURKEY PRODUCTION, LLC,
24 GEORGE'S, INC., GEORGE'S FARMS,
25 INC., PETERSON FARMS, INC.,
SIMMONS FOODS, INC., and WILLOW
BROOK FOODS, INC.,

Defendants.

VIDEOTAPED DEPOSITION OF JAMES CRUTCHER, M.D.
TAKEN ON BEHALF OF THE DEFENDANTS
ON DECEMBER 20, 2007, BEGINNING AT 9:38 A.M.
IN OKLAHOMA CITY, OKLAHOMA

VIDEOTAPED BY: STESHA FERGUSON
REPORTED BY: DANIEL LUKE EPPS, CSR, RPR

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1 are there people who I'm calling field
2 investigators who go out and ask questions,
3 gumshoes?

4 A In the county health departments
5 there are what's called communicable disease
6 nurses. They're really not epidemiologists, but
7 they are communicable disease nurses that go by
8 protocols to collect data, and then the state
9 epidemiologists really focus at the state health
10 department and do not get involved in every, you
11 know, disease that's reported to us. Generally
12 only when there is an outbreak or a disease of
13 concern arises, whatever that reason for that is.

14 Q Since you've been involved with the
15 Oklahoma Health Department, has there ever been
16 a, quote, "outbreak," end quote, associated with
17 the Illinois River with which the health
18 department has been concerned?

19 A Not that I'm aware of.

20 Q And since you've been with the
21 health department, has there ever been -- what's
22 the second word you used?

23 A An increase in incidence of disease
24 or --

25 Q Yeah. Has there ever been something

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1 like that in the Illinois River Basin with which
2 the health department has been concerned?

3 A Not that I'm aware of. An outbreak,
4 there's not been an outbreak or a disease --
5 elevated levels of disease that have occurred as
6 a result of, you know, being exposed to the
7 Illinois River that I'm aware of.

8 Q All right, sir. So let me return to
9 this issue and see if I can understand what
10 happens. Let's assume -- I'm going to use Jack
11 In The Box because it just happens to be
12 something I remember. Poor Jack In The Box. I
13 don't know if they exist anymore.

14 A I don't know. I haven't seen any.

15 Q I don't see them for some reason,
16 but if you had that kind of a Jack In The Box
17 outbreak, whether that was salmonella or E. coli,
18 whatever it was, are there people that you send
19 out into the field to start interviewing these
20 people who have the disease so that you can
21 actually come to the conclusion that was related
22 to Jack In The Box at 13th and Elm?

23 A Yes.

24 Q Okay. Let's take a break.

25 THE VIDEOGRAPHER: We are off the

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1 next sentence says, "Several geographic clusters
2 of campylobacteriosis occurred during the summer
3 months in Cleveland, Kingfisher, LeFlore,
4 Oklahoma, and Tulsa Counties."

5 A Right.

6 Q Do you have a recollection of that
7 in 2004, sir?

8 A No, I do not.

9 Q Do you know, sir, if there was -- if
10 there's any explanation why there were clusters
11 of campylobacteriosis in these five counties?

12 A No, I do not.

13 Q What does -- and you've used the
14 word "cluster" yourself today. Tell me how you
15 define -- what would constitute a cluster of a
16 disease?

17 A Geographic or temporally focused
18 increased number of cases that were occurring.
19 So over a short period of time or in a certain
20 geographic area, you see a number of cases that
21 occur that make you think that there may be some
22 common association to them.

23 Q When your department receives the
24 data from the counties, is that part of the
25 mission is to be analyzing that data to identify

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1 whether any clusters exist?

2 A Yes.

3 Q And I believe based upon the
4 questions you answered a few moments ago that the
5 department has not identified any cluster at any
6 time related to campylobacter within the Oklahoma
7 counties in the Illinois River Watershed, is that
8 correct?

9 A None that I am aware of. Again,
10 Dr. Bradley may have additional information, but
11 I am not aware that there have been specific
12 outbreaks associated there.

13 Q Sir, would your answer be the same
14 for salmonellosis?

15 A Yes.

16 Q And for E. coli?

17 A Yes.

18 Q The next paragraph on that page,
19 Doctor, it says, "In 2004, cases ranged in age
20 from one day to 92 years with a median age of 28
21 years." The next sentence, "Infants and young
22 children had the highest incidence of
23 campylobacter infections." Doctor, can you
24 explain why infants and young children had the
25 highest incident rate?

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1 cannot tell you that there have been cases of
2 human disease that have resulted from that, but,
3 you know, that's certainly concerning that there
4 are excessive levels of pathogenic organisms in
5 water supplies in the state.

6 Q There is -- the state of Oklahoma
7 virtually from one end to the other has a problem
8 with bacteria contamination in surface waters,
9 doesn't it?

10 A I can't -- I can't answer that.

11 Q You don't know?

12 A I don't know that. Huh-uh.

13 Q And you don't know that the Illinois
14 River waters are any more -- excuse me. Let me
15 go back to the question that I asked where you
16 gave the prior answer. You stated you have
17 concern when you see elevated bacteria in water.
18 That's your job to be concerned, but my question
19 was are you aware of any data to suggest that it
20 is poultry litter that is causing any elevated
21 health risk in the Illinois River Watershed?

22 A I personally am not aware of data.
23 You know, looking at the affidavits and the
24 opinions of the experts that are based upon the
25 data that was provided to them is the information

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1 that I'm going on to make that association
2 between the poultry litter provided. I am not
3 aware personally of any other data that supports
4 that.

5 Q Other than the three affidavits that
6 were provided you by either Mr. Page or
7 Mr. Nance, you're not aware of any data to
8 suggest a connection between poultry litter and
9 health effects in the Illinois River Watershed,
10 is that right?

11 A That right.

12 Q I'll pass the witness. Thank you.
13 And she needs to change the tape so if you want a
14 brief break -- do you think we can be done
15 without taking a lunch break?

16 MR. GEORGE: If you can endure about
17 30 minutes. That way we can be done and get you
18 out of here.

19 THE WITNESS: That's fine with me.

20 THE VIDEOGRAPHER: We are off the
21 record at 12:00 p.m.

22 (Short break at 12:00 p.m., resumed at 12:07
23 p.m.)

24 THE VIDEOGRAPHER: We are back on
25 the record at 12:07 p.m.

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1 investigate or assist in the investigation of a
2 human health risk posed by bacteria levels in
3 surface water or ground water in the Illinois
4 River Watershed?

5 A Over the last year, I mean, since
6 the -- I guess the beginning of this issue, we
7 have been involved with the Secretary of the
8 Environment in his role and representatives from
9 the Department of Environmental Quality.

10 Q Let me refine my question a bit,
11 sir. Prior to the initiation of this lawsuit,
12 had the department of health been requested by
13 any other state agency to investigate or assist
14 in the investigation of a human health risk posed
15 by bacteria levels in surface water or ground
16 water in the Illinois River Watershed?

17 A Not to my knowledge.

18 Q And, in fact, sir, is it true that
19 your department was not asked to conduct such an
20 investigation immediately prior to the filing of
21 this lawsuit?

22 A Not a more in-depth -- no. Prior
23 to, I mean, we would ask for information at the
24 time that this began and we were called in to
25 participate, but prior to that, you're saying

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1 were we asked to do anything? No.

2 Q I'll state the question a little
3 more clearly. It was kind of awkward. Did I
4 understand correctly that your agency was not
5 consulted about claims of threats to human health
6 prior to the filing of this lawsuit?

7 A That's true.

8 Q Now, if I understand your testimony
9 thus far, Dr. Crutcher, your department regularly
10 receives at least on a yearly basis public health
11 data about disease incidence from counties
12 throughout the state of Oklahoma, is that
13 correct?

14 A We receive reporting information
15 from all over the state primarily from, again,
16 hospitals, physicians, and in laboratories. The
17 information does not originally come to us from
18 county health departments. It comes from those
19 entities throughout the state in the respective
20 counties.

21 Q Given the reports that have been
22 discussed here today, do I understand correctly
23 that after that data is received from all of
24 those various sources, that one of the things the
25 department of health does is organize it by

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1 county?

2 A Yes.

3 Q Okay. And the county data which
4 your department is the custodian of in terms of
5 public health data includes reported incidences
6 of campylobacteriosis, E. coli, and
7 salmonellosis, is that correct?

8 A Yes.

9 Q And included in the county data
10 would be information from the counties of Adair,
11 Cherokee, Delaware, and Sequoyah Counties,
12 correct?

13 A Yes.

14 Q Now, someone at your department, I
15 assume, you correct me if I'm wrong, actually
16 reviews that data, countywide data, to identify
17 trends or patterns or possible alarming
18 incidences, is that correct?

19 A Yes.

20 Q Okay.

21 A Periodically that is done. We
22 create an annual report so it may be done
23 annually where that's looked at.

24 Q If someone in your department
25 perceives a statistically significant elevation

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1 in a disease incidence in a particular county, do
2 I understand that your department has both the
3 authority and the obligation to investigate those
4 statistically significant elevations in disease?

5 A Yes. I mean, there's no firm
6 guideline as to when that has to take place.
7 It's certainly within -- we have a bit of
8 latitude to, you know, use the knowledge that we
9 have to determine whether we think it is a
10 significant increase in disease to determine
11 whether we launch into an investigation.

12 Q Okay. In your 12 years at the
13 department of health, has your department ever
14 taken any action that you're aware of based on a
15 belief that Adair, Cherokee, Delaware, or
16 Sequoyah Counties were experiencing a
17 statistically significant elevated rate of
18 campylobacteriosis?

19 A No.

20 Q Okay. In your 12 years at the
21 department, has the department of health ever
22 taken any action that you're aware of based upon
23 a belief that Adair, Cherokee, Delaware, and
24 Sequoyah counties were experiencing a
25 statistically significant elevated rate of

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1 salmonellosis? I have a hard time saying that.

2 A No.

3 Q If I ask the same question with
4 regard to E. coli, would your answer be the same?

5 A Yes.

6 Q When information is available to
7 your department, sir, that suggests an imminent
8 and substantial threat to human health, does your
9 department regularly issue warnings or public
10 advisories?

11 A Yes.

12 Q Okay. I noticed in looking through
13 some materials from your website that I've put
14 before you that your department apparently uses
15 its website as you would imagine as a
16 communication vehicle and as a result of that
17 posts its notices on the website, correct?

18 A Yes.

19 Q And I won't ask you to do this. I
20 went through just for 2007 to see how prolific
21 your department had been in issuing notices and I
22 came to about 150. Do you have any reason to
23 disagree with that range in terms of the extent
24 to which your department issues notices informing
25 the public of health risks?